



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

CHB

271 Cadman Plaza East
Brooklyn, New York 11201

June 14, 2012

By ECF

The Honorable Kiyo A. Matsumoto
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Kissone Frederick
Criminal Docket No. 09-258 (KAM)

Dear Judge Matsumoto:

The government writes in response to the defendant's June 13, 2012 letter. The Court correctly observed in its recent order that a seven-year sentence on Count Three was appropriate because Frederick did not simply use the firearm during the attempted robbery of the cell phone store but affirmatively "display[ed] all ... of the firearm, ... in order to intimidate" the store's employee. 18 U.S.C. § 924(c)(4); see June 5, 2012 Order at 7; see also June 4, 2010 Order on First Rule 33 Motion at 6 (discussing evidence of brandishing at trial); Trial Testimony of Kersha Ellis at 134 ("Q: Was there anything in particular about the fact that the individual took the gun out on the street that gave you concern? A: I was like he's crazy, he's coming to get me so I went -- I went running."); Dean v. United States, 556 U.S. 568, 572-73 (2009) (discussing brandishing); Harris v. United States, 536 U.S. 545, 552-569 (2002) (holding that brandishing is sentencing factor to be found by court).

Respectfully submitted,

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cc: Joyce London, Esq. (by email)